The Mysore Gazette.

Vol. 42.] PUBLISHED BY AUTHORITY. [No. 12.

BANGALORE, THURSDAY, MARCH 21, 1907.

PART III.

Legislative Measures and Rules thereunder.

No. J. 2709—*Legis.* 19*th of* 1906, *dated* 6*th March* 1907.

The accompanying Draft of a Regulation relating to Treasure-trove in Mysore, together with a statement of objects and reasons therefor, is published for general information.

2. The Draft Regulation will be taken up for consideration at the end of three months from the date of its publication in the Gazette. All suggestions and criticisms received on the subject during this period will be duly considered.

By Order,
K. S. CHANDRASEKHARA AIYAR,
Secy. to Govt., Gen. & Rev. Depts.

GOVERNMENT OF MYSORE, LEGISLATIVE DEPARTMENT.

(DRAFT)

Regulation No. , *dated* 190 .

A Regulation to provide a law relating to Treasure-trove.

Preamble. Whereas it is expedient to provide a law relating to Treasure-trove in Mysore, His Highness the Maharaja is pleased to enact as follows:—

PRELIMINARY.

Short title. 1. This Regulation may be called "The Mysore Treasure-trove Regulation, 190 ."

Extent. It extends to the whole of Mysore;

Commencement. And it shall come into force on the date of the passing thereof.

2. The Rules for the disposal of Treasure-trove published under the late Mysore Chief Commissioner's Notification No. 6, dated the 17th April 1867, are hereby repealed.

Repeal of enactments.

Interpretation clause.

3. In this Regulation—

"Treasure."

"Treasure" means anything of any value hidden in the soil, or in anything affixed thereto.

"Deputy Commissioner."

"Deputy Commissioner" means (1) any Revenue Officer in independent charge of a District, and (2) any officer appointed by Government to perform the functions of a Deputy Commissioner under this Regulation.

"Owner."

"When any person is entitled, under any reservation in an instrument of transfer of any land or thing affixed thereto, to treasure in such land or thing, he shall, for the purposes of this Regulation, be deemed to be the owner of such land or thing.

PROCEDURE ON FINDING TREASURE.

Notice by finder of treasure.

4. Whenever any treasure exceeding in amount or value ten rupees is found, the finder shall, as soon as practicable, give to the Deputy Commissioner notice in writing—

(*a*) of the nature and amount or approximate value of such treasure;

(*b*) of the place in which it was found; and

(*c*) of the date of the finding;

and either deposit the treasure in the nearest Government Treasury, or give the Deputy Commissioner such security as the Deputy Commissioner thinks fit, to produce the treasure at such time and place as he may from time to time require.

Notification requiring claimants to appear.

5. On receiving a notice under section 4, the Deputy Commissioner shall, after making such enquiry (if any) as he thinks fit, take the following steps (namely):—

(*a*) he shall publish a notification in such manner as the Government from time to time prescribe in this behalf, to the effect that, on a certain date (*mentioning it*) certain treasure (*mentioning its nature, amount and approximate value*) was found in a certain place (*mentioning it*); and requiring all persons claiming the treasure, or any part thereof to appear personally or by agent before the Deputy Commissioner on a day and at a place therein mentioned, such day not being earlier than four months, or later than six months after the date of the publication of such Notification;

(*b*) when the place in which the treasure appears to the Deputy Commissioner to have been found was at the date of the finding in the possession of some person other than the finder, the Deputy Commissioner shall also serve on such person a special notice in writing to the same effect.

Forfeiture of right on failure to appear.

6. Any person having any right to such treasure or any part thereof, as owner of the place in which it was found or otherwise, and not appearing as required by the notification issued under section 5, shall forfeit such right.

Matters to be enquired into and determined by the Deputy Commissioner.

7. On the day notified under section 5, the Deputy Commissioner shall cause the treasure to be produced before him, and shall enquire as to and determine—

(*a*) the person by whom, the place in which, and the circumstances under which, such treasure was found; and

(*b*) as far as is possible, the person by whom, and the circumstances under which, such treasure was hidden.

Time to be allowed for suit by person claiming the treasure.

8. If upon an enquiry made under section 7, the Deputy Commissioner sees reason to believe that the treasure was hidden within one hundred years before the date of the finding, by a person appearing as required by the said notification

and claiming such treasure, or by some other person under whom such person claims, the Deputy Commissioner shall make an order adjourning the hearing of the case for such period as he deems sufficient to allow of a suit being instituted in the Civil Court by the claimant to establish his right.

When treasure may be declared ownerless.

9. If, upon such enquiry the Deputy Commissioner sees no reason to believe that the treasure was so hidden; or

if, where a period is fixed under section 8, no suit is instituted as aforesaid within such period to the knowledge of the Deputy Commissioner; or

if such suit is instituted within such period, and the plaintiff's claim is finally rejected; the Deputy Commissioner may declare the treasure to be ownerless.

Appeal against such declaration.

Any person aggrieved by a declaration made under this section may appeal against the same within two months from the date thereof to the Government;

subject to such appeal, every such declaration shall be final and conclusive.

Proceedings subsequent to declaration.

10. When a declaration has been made in respect of any treasure under section 9, such treasure shall be disposed of in accordance with the provisions hereinafter contained.

When no other person claims as owner of place, treasure to be given to finder.

11. When a declaration has been made as aforesaid in respect of any treasure and no person other than the finder of such treasure has appeared as required by the notification published under section 5, and claimed a share as owner of the place in which it has been found, the Deputy Commissioner shall, subject to the provisions of section 16, deliver such treasure to the finder thereof.

When only one such person claims, and his claim is not disputed, treasure to be divided.

12. When a declaration has been made as aforesaid in respect of any treasure, and only one person other than the finder of such treasure has so appeared and claimed, and the claim of such person is not disputed by the finder, the Deputy Commissioner shall proceed to divide the treasure between the finder and the person so claiming according to the following rule (namely):—

If the finder and the person so claiming have not entered into any agreement then in force as to the disposal of the treasure, one-half of the treasure shall be allotted to such finder and the other half to such person. If such finder and such person have entered into any such agreement, the treasure shall be disposed of in accordance therewith:

Provided that the Deputy Commissioner may in any case, if he thinks fit, instead of dividing any treasure as directed by this section—

(*a*) allot to either party the whole or more than his share of such treasure on such party paying to the Deputy Commissioner for the other party such sum of money as the Deputy Commissioner may fix as the equivalent of the share of such other party, or of the excess so allotted, as the case may be; or

(*b*) with the sanction of Government and subject to its instructions, if any, sell such treasure or any portion thereof by public auction and divide the sale proceeds between the parties according to the rule hereinbefore prescribed:

Provided also that when the Deputy Commissioner has by his declaration under section 9 rejected any claim made under this Regulation by any person other than the said finder or person claiming as owner of the place in which the treasure was found, such division shall not be made until after the expiration of two months without an appeal having been presented under section 9 by the person whose claim has been so rejected, or, when an appeal has been so presented, after such appeal has been dismissed.

When the Deputy Commissioner has made a division under this section, he shall deliver to the parties the portions of such treasure or the money in lieu thereof, to which they are respectively entitled under such division.

And shares to be delivered to parties.

13. When a declaration has been made as aforesaid in respect of any treasure, and two or more persons have appeared as aforesaid and each of them claimed as owner of the place where such treasure was found, or the right of any person who has so appeared and claimed is disputed by the finder of such treasure, the Deputy Commissioner shall retain such treasure, and shall make an order staying his proceedings with a view to the matter being enquired into and determined by a Civil Court.

In case of dispute as to ownership of place, proceedings to be stayed.

14. Any person who has so appeared and claimed may within one month from the date of such order institute a suit in the Civil Court to obtain a decree declaring his right; and in every such suit the finder of the treasure and all persons disputing such claim before the Deputy Commissioner shall be made defendants.

Settlement of such dispute.

15. (1) If any such suit is instituted and the plaintiff's claim is finally established therein, the Deputy Commissioner shall, subject to the provisions of Section 12, divide the treasure between him and the finder.

And division thereupon.

(2) If no such suit is instituted as aforesaid, or if the claims of the plaintiff's in all such suits are finally rejected, the Deputy Commissioner shall deliver the treasure, subject to the provisions of section 16, to the finder.

16. If, in the case referred to in section 11 or in sub-section (2) of section 15, the amount or value of the treasure found exceeds one lakh of rupees, the Deputy Commissioner shall deliver so much of the treasure as is of the amount or value of one lakh of rupees to the finder and shall declare the excess to be at the disposal of Government.

If value of treasure exceeds one lakh, finder to get one lakh, the excess going to Government in specified cases.

17. The Deputy Commissioner may, at any time after making a declaration under section 9, and before delivering or dividing the treasure as hereinbefore provided, declare by writing under his hand his intention to acquire on behalf of the Government the treasure or any specified portion thereof, by payment to the persons entitled thereto of a sum equal to the value of the materials of such treasure or portion, together with one-fifth of such value, and may place such sum in deposit in his treasury to the credit of such persons; and thereupon such treasure or portion shall be deemed to be the property of Government and the money so deposited shall be dealt with, as far as may be, as if it were such treasure or portion.

Power to acquire the treasure on behalf of Government.

18. No decision passed or act done by the Deputy Commissioner under this Regulation shall be called in question by any Civil Court, and no suit or other proceeding shall lie against him for anything done in good faith in exercise of the powers hereby conferred.

Decision of Deputy Commissioner final and no suit to lie against him for acts done *bona fide*.

19. A Deputy Commissioner making any enquiry under this Regulation may exercise any power conferred by the Code of Civil Procedure on a Civil Court for the trial of suits.

Deputy Commissioner to exercise powers of Civil Court.

20. The Government may, from time to time, make rules, consistent with this Regulation to regulate proceedings hereunder and generally all matters not provided for herein. Such rules shall, on being published in the official Gazette, have the force of law.

Power to make rules.

PENALTIES.

21. If the finder of any treasure fails to give the notice or does not either make the deposit or give the security required by section 4, or alters or attempts to alter such treasure so as to conceal its identity, the share of such treasure or the

Penalty on finder failing to give notice, etc.

money in lieu thereof to which he would otherwise be entitled shall vest in the Government; and he shall, on conviction before a Magistrate, be punished with imprisonment for a term which may extend to one year or with fine or with both.

Penalty on owner abetting offence under section 21.

"22. If the owner of the place in which any treasure is found abets, within the meaning of the Indian Penal Code, any offence under section 21, the share of such treasure or the money in lieu thereof to which he would otherwise be entitled, shall vest in the Government, and he shall, on conviction before a Magistrate, be punished with imprisonment which may extend to six months or with fine or with both.

STATEMENT OF OBJECTS AND REASONS.

The Law in force in Mysore regarding treasure-trove is contained in the Rules published under the late Chief Commissioner's Notification No. 6, dated the 17th April 1867.* These rules were adopted from Regulation XI of 1832 of the Madras Code; but, having been published by the late Chief Commissioner without the sanction of the Government of India, it is a question how far they can be regarded as valid. Moreover they have become unworkable in practice and unsuited to present requirements in certain respects. Hence the necessity for the present Regulation.

*Published at page 119 of the *Mysore Gazette*, dated 4th May 1867.

2. The Draft Regulation is based on the Indian Treasure-Trove Act VI of 1878) but it makes certain departures therefrom.

3. The object of the Regulation is to define the rights in treasure-trove of the finders thereof and the other parties interested. The Regulation requires intimation to be given of the finding of the treasure and secures the right of all persons who can establish an antecedent property in it. This antecedent right can be established only in cases where there is presumptive evidence that the treasure was hidden within one hundred years. If such right cannot be established, the Regulation proceeds to determine the respective rights of the finder and the owner of the soil where the treasure was found. All claims to the treasure and all disputes as to the ownership of the land are to be referred to the Civil Court. Where the treasure exceeds one lakh of rupees in amount or value, and when no person other than the finder has established his right to a share, the finder is to get one lakh, the excess going to Government. The Government has also power to retain the treasure on payment of one-fifth in excess of its intrinsic value.

4. The Draft Regulation lays down the following procedure for observance :—

(*a*) The finder shall give notice of the finding to the Deputy Commissioner.

(*b*) Notice shall be given by Deputy Commissioner to the owner or owners of land where the treasure was found.

(*c*) The discovery of the treasure shall be advertised and all claimants desired to come forward within six months.

(*d*) Claims to the treasure or to a share in it shall be enquired into.

5. The Draft Regulation differs from Act VI of 1878 in the following particulars :—

(*a*) The right of Government to the excess beyond one lakh, when no person other than the finder has established his right to a share (Section 17). This is taken from the Chief Commissioner's Rules, though there is no similar provision in the Indian Act.

(*b*) As between the owner and finder, the Indian Act allots three-fourths to the finder and one-fourth to the owner. An equal division between the two is considered more equitable and the Regulation provides for this accordingly (Section 12).

(*c*) When the Deputy Commissioner proceeds to sell the treasure under section 12, he is required to take the orders of Government as to the particulars of sale.

(*d*) Power is reserved to Government to make rules on matters incidental to treasure-trove not provided for in the Regulation.

No. J. 2754—*Legis.* 44-06-1, *dated* 8*th March* 1907.

The accompanying Draft of a Regulation further to amend the Code of Civil Procedure as in force in Mysore, together with a statement of objects and reasons therefor, is published for general information.

2. The Draft Regulation will be taken up for consideration at the end of three months from the date of its publication in the Gazette and all suggestions and criticisms received within that period will be duly considered.

By Order,

K. S. CHANDRASEKHARA AIYAR,
Secy. to Govt., Gen. & Rev. Depts.

Draft of a Regulation further to amend the Civil Procedure Code.

Whereas it is expedient further to amend the Code of Civil Procedure as in force in Mysore; His Highness the Maharaja is pleased to enact as follows :—

Addition to Section 310A of the Civil Procedure Code.

1. To Section 310A of the said Code, the following Sub-Section shall be added between Sub-Sections (1) and (2), namely,

"(1. A.) If such deposit is made within thirty days of the sale, the Court shall pass an order setting aside the sale."

Addition to Section 584 (*d*).

2. In clause (*d*) of Section 584 of the said Code, after the words "in those cases," there shall be inserted the following words, namely,

"of which the amount or value of the subject matter is five hundred rupees or above and"

Amendment of Section 586.

3. In Section 586, for the words "fifty rupees," the words "five hundred rupees" shall be substituted.

Addition to Section 588.

4. To Section 588 of the said Code, the following clause shall be added, namely,

"(16. A.) orders under Section 310A."

STATEMENT OF OBJECTS AND REASONS.

The accompanying draft Regulation is intended, *firstly*, to rectify certain formal defects in the Code of Civil Procedure as amended by Regulation III of 1906, and *secondly*, to promote the speedier disposal of business in the Chief Court by curtailing the right of second appeal to a certain extent.

2. Section 310A as inserted by Regulation III of 1906 provides that a person owning immoveabe property or holding certain kinds of interest therein may apply to have the sale of such property set aside on making certain deposits within thirty days from the date of the sale. A Sub-Section has been added to the Section to make it clear that, where such deposit as above is made, the Court shall pass an order setting aside the sale. A clause has also been added to Section 588, so as to render orders under Section 310A appealable, a fact already implied in Sub-Section (4) of Section 310A.

3. When the Code of Civil Procedure was introduced into Mysore in 1884, clause (*d*) was added to Section 584 so as to allow to the Chief Court (then newly formed, with three Judges) a second appeal on questions of fact when the two lower Courts differed in opinion on such questions. The Chief Court have recommended that either clause (*d*) may be repealed altogether, or that the provisions in regard to second appeals on questions of fact may be limited to appeals of the value of Rs. 500 and over. Considering the fact that the decrees of the Chief Court are final in Mysore, and that there is no further appeal to a higher tribunal as in British India, the Government are of opinion that the second alternative is the preferable one. Hence the amendment proposed as regards Section 584.

4. Section 586 as amended by Regulation II of 1884, allows second appeals in all suits of a small cause nature exceeding Rs. 50 in value. The limit is Rs. 500 in British India; and there seems to be no good reason why the limit should not be similarly raised in Mysore. The Chief Court have urged the change on the ground that second appeals in petty cases have greatly blocked the progress of litigation. Section 586 is proposed to be amended accordingly.

NOTIFICATION.

No. J. 2916—*Leg.* 47 *of* 06, *dated* 20*th March* 1907.

His Highness the Maharaja considers that the time has arrived for associating with his Government in the task of legislation a certain number of official and non-official gentlemen qualified by practical experience and knowledge of local conditions and requirements to assist in the making of laws and regulations, and that it is desirable to form a Legislative Council, comprising both official and non-official elements, so as to secure to measures proposed the benefit of discussion by a number of qualified men and from different standpoints. The introduction of any such institution is not, it may be remarked, intended in any way to affect or diminish the responsibility which, in legislation as in all other matters connected with the administration of the State, rests ultimately with His Highness himself; but solely to enable His Highness and his Government to ascertain correctly the wants, wishes and feelings of the people, and to ensure that the laws enacted by him as the Ruler of the State are in all respects well adapted to serve the ends in view. The publicity under which the discussions will ordinarily be carried on, and the facility afforded for the detailed consideration of every measure in a Select Committee, which is one of the features of a regularly constituted Legislative Council, are additional reasons for anticipating much practical good from such an institution.

His Highness the Maharaja has for these reasons been pleased to enact the accompanying Regulation to establish a Council for making Laws and Regulations in Mysore.

2. Under this Regulation, which will come into force on the expiry of three months from the date of its first publication, the Legislative Council will consist of the Dewan as President, the two Councillors as *ex officio* members, and not less than ten or more than fifteen additional members to be nominated by Government and holding office for a period of two years at a time. Not less than two-fifths of such additional members will be non-officials, and provision has been made for defining the conditions under which all or any of the non-official members are to be selected prior to nomination by Government. For the present, the number of additional members has been fixed at ten, and all nominations will be in the hands of Government, the question of allowing local bodies the privilege of submitting recommendations being considered later on when sufficient experience has been gained. The names of the additional members appointed will be notified separately.

3. While it is the function of the Legislative Council itself to make such rules as it may, from time to time, find necessary to regulate the conduct of its business, it is thought convenient to set out a few rules on the subject in a schedule to the Regulation, both as an example of what such rules are intended to provide for, and as likely to be sufficient in themselves for all practical purposes in the early days of a new Council, till it feels the necessity for adding to or altering them. The right of disallowing all or any of the rules made by the Council is reserved to the Government; but will, of course, only be exercised in the rare cases in which a rule made is likely to be prejudicial to the efficient, harmonious or speedy transaction of business.

4. The business to be transacted at meetings will be confined to the "consideration and passing" of measures introduced therein. The "enactment" of every

measure rests with His Highness the Maharaja and is constituted by the act of according his assent thereto. The proviso to section 12 excludes from the consideration of the Council a class of cases which all involve imperial relations, as also any other matters which may be specially reserved by His Highness the Maharaja for consideration by the Government. In all such cases it will be competent to Government to frame the necessary Regulations by means of the power reserved by section 14, and submit the same to His Highness the Maharaja for assent.

5. Special provision is made in section 15 for the passing of measures which, while not outside the jurisdiction of the Legislative Council, are yet so emergently required that the regular course of introduction, consideration and passing thereof in the Council is likely to entail serious delay or is otherwise inexpedient. Such Regulations, however, are not intended to be operative for more than six months; their further extension beyond that period being a matter dependent on the measures being formally placed before the Council in the regular course.

By Order,
K. S. CHANDRASEKHARA AIYAR,
Secy. to Govt., Gen. & Rev. Dept's.